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TAGS: [PREL](#) [UNGA](#) [NL](#)

SUBJECT: NETHERLANDS/KOSOVO: UNDECIDED ON UNGA RESOLUTION

REF: SECSTATE 91908

Classified By: Political-Economic Counselor Andrew C. Mann for reasons
1.5(b,d)

¶1. (C) SUMMARY: Dutch MFA staff are undecided on Serbia's proposal for an UNGA resolution to ask the International Court of Justice (ICJ) for an advisory opinion on Kosovo's independence. They are leaning toward opposing the resolution, or more likely abstaining, and they will submit the issue to FM Verhagen for a decision. END SUMMARY.

¶2. (C) Poloff raised reftel points with MFA contacts Peter van der Vliet, chief for UN political and legal affairs, and Ard van der Vorst, Coordinator for Political Affairs for the Western Balkans, in discussions September 2 and 8, as well as with EU Correspondent Desiree Kopmels on September 9. Legal Counselor and Deputy Legal Counselor also discussed the issue with the MFA Legal Adviser on September 3. The Dutch are weighing the arguments on both sides carefully. On the one hand, noted Van der Vliet, the Netherlands' special role as host to the ICJ supports allowing a referral, in support of the ICJ as an institution. In addition, some are inclined not to back down from Russian-inspired challenges: opposing the resolution suggests the West is defensive, and in particular, is concerned about its legal position in recognizing Kosovo's independence.

¶3. (C) On the other hand, Van der Vorst and Van der Vliet acknowledged that waiting years for an ICJ decision could defer the West's dreams for Serbia and Kosovo to move ahead in their political development and beyond the current political stalemate.

¶4. (C) Other factors complicate the analysis for the Dutch. First, there is the prospect of Georgia offering a parallel resolution referring Russia's recognition of the independence of South Ossetia and Abkhazia to the ICJ. Van der Vliet asked how Washington would react to such a measure. (Comment: Van der Vliet left unsaid the arguments on both sides. The West's opposing both the Georgian and Serbian resolutions might be legally consistent but politically difficult. Alternatively, taking different positions on the two resolutions would be easy for Russia to criticize. End comment.) Also reflecting Dutch uncertainty, the MFA Legal Adviser, whom one would expect to be one of advocates for the ICJ-support argument, only noted this issue in passing. Instead, she discussed in more detail that the ICJ could not reverse the events on the ground, including the fact that a number of countries had recognized Kosovo. Consequently, an ICJ opinion, including an ambiguous opinion, provided risks, but did not necessarily provide any benefits. In contrast, Van der Vliet suggested that any ICJ decision is likely to be ambiguous and support both sides. Moreover, in past UNGA votes on ICJ referrals, the Dutch have taken both sides.

¶5. (C) Van der Vliet concluded that "it would be difficult to vote against the resolution," but the Dutch are inclined to

oppose the resolution, or more likely, abstain. Kopmels thought it highly unlikely the Dutch would do anything but abstain. France appears to be pushing the EU toward a joint abstention.
Culbertson